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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,609	12/31/2003	Deliang Yang	C-2734	8914

7590 12/01/2005

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EXAMINER
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MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/750,609	<b>Applicant(s)</b> YANG ET AL.	
	<b>Examiner</b> Julian Mercado	<b>Art Unit</b> 1745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-31-03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The Information Disclosure Statement filed on December 31, 2003 has been considered by the examiner with the following exception:

Document No. 5 cited as 10/036,181 has been lined-through as citation of a U.S. application No. which is not a published document is not in compliance with MPEP 609. However, the application No. corresponds to U.S. Pat. 6,794,077 which is cited in the attached Form PTO-892.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites a second reactant flow field secured adjacent the non-selected surface. As this claim recites back to claim 1 wherein a first and second surface is claimed in Markush format, i.e. "selected from the group consisting of...", recitation of the *non-selected* surface does not appear to be positively recited nor required in the claim. (emphasis added)

It is suggested, therefore, to amend claim 5 by replacing each instance of "non-selected surface" with --the first or second surface--. Since the claim requires a second reactant flow

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field, it is understood that the second reactant flow field would be adjacent to either the first or second surface that is not occupied by the first reactant flow field.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Vitale (U.S. 5,981,098)

Vitale teaches a fuel cell having a membrane electrode assembly [218] with anode and cathode flow fields [210] adjacent thereto. See col. 5 line 48-54, see also col. 2 line 14-22. Figure 5 shows the flow field having a plurality of pass circuits [240] in communication with reactant inlets [222'/150'] and outlets [224'/150']. Thus, a plurality of two-pass circuits are shown, e.g. a total of six two-pass circuits as shown in Figure 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitale.

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The teachings of Vitale are discussed above.

With respect to claims 2 and 6 which recite a size dimension, it is asserted that absent of evidence that the claimed device performs differently than the prior art device, the claimed device is not patentably distinct from the prior art device. *In re Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984). Notwithstanding, Figure 5 of Vitale shows that the width across the pass circuits [240] fall within the range of 0.3 to 1.0 of the length, i.e. the width of the flowfield is less than the length. This configuration is further exemplified by the patentees' teaching that any number of flow channels may be employed, which would additionally increase the length dimension. See col. 10 line 15-23. Thus, while Vitale may express a preference for a width that is less than the length so that the resultant ratio is around the upper limit of 0.3 to 1.0, at the same time the patentees provide motivation for the skilled artisan (by way of specific example) to focus on width/length ratios at the bottom of the exemplified range, i.e. the claimed 0.1 to 0.5, and to explore ratios below the exemplified range.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Pat. 5,686,199 to Calvalca et al. is cited of cumulative relevance.

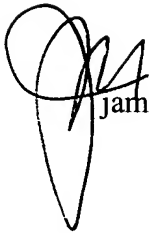
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Handwritten signature of Patrick J. Ryan, with the name "Ryan" written below it.

  
**PATRICK JOSEPH RYAN**  
**SUPERVISORY PATENT EXAMINER**